

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA FILED

MARK J. WHALING.

Petitioner

10-135

SCRANTON

vs.
Robert D. Shannon.
Warden

Civil No:

Judge.

PER

DEPUTY CLERK

APR 10 2010
[Signature]

HABEAS CORPUS
§ 2254

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

1. The name and address of your present place of confinement:

Mark J. Whaling # FW 9846 SCI-Frackville
111 Altamont Blvd, Frackville, PA 17931

2. Are you presently in custody pursuant to the conviction(s) or sentence that you seek to challenge here?

Yes No

3. With regard to the conviction(s) or sentence you are attacking state:

a. The name, address, and parish of the court entering the judgment of conviction:

Commonwealth of Pennsylvania. Erie County
Case # CP-25-0571-2003

b. The date of judgment of conviction: November 5, 2003

c. The length of your sentence: 7 1/2 to 27 years

d. The nature of each offense you were convicted of: PWED (Poss w/Intent to
Deliver) - Cocaine and Criminal Conspiracy

e. Whether you were convicted of each offense following a plea of:

i. Not guilty

ii. Guilty

iii. Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or
indictment, give details: N/A

f. If you pleaded not guilty, what kind of trial did you have? (check one)

i. Jury

ii. Judge only

g. Did you testify at trial?

Yes No X

4. **Statute of Limitations**

28 U.S.C. § 2244(d) establishes a 1 year statute of limitations for an application for a writ of habeas corpus. Is this application barred by this 1-year period of limitation? YES NO X

If not, state why not? Pendency of State Appeals and Post Conviction Remedies and further Appeals
Tailed the limitation period

5. **Grounds for Present Petition**

State concisely each and every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach pages stating additional grounds and facts supporting same.

WARNING: Absent exceptional circumstances, if you fail to set forth all grounds in this petition, you will be barred from presenting additional grounds at a later date. See 28 U.S.C. § 2244.

a. Ground one: 6th AMENDMENT - Violation of the Right to Confront witnesses - Hearsay Crawford v. Washington

Supporting FACTS (state briefly without citing cases or law) Police witness introduced prejudicial hearsay testimony of a non-testifying witness to bolster co-defendant testimony as to identification - Moravec
Such hearsay proves that police made willful and intentional fabrication and false statements in search warrant application

b. Ground two: 4th AMENDMENT - Illegal Seizure/Detention of the person without a lawful warrant or probable cause.

Supporting FACTS (state briefly without citing cases or law) petitioner was seized by police outside a residence where a warrant was being executed, he was searched, (found to have "NO" contraband) was handcuffed and detained - then arrested even though he was not named in the warrant and was not an resident² of the home. 2 other females with petitioner also had no contraband but they were released after scene was secured, yet petitioner was forced to remain for Hours and taken to jail after drugs where found in home

c. Ground three: 4th Amendment - Illegal Search Warrant allowing all persons present Search authority

Supporting FACTS (state briefly without citing cases or law) Police deliberately falsified search warrant affidavit by withholding material information in order to obtain an "All Persons Warrant" where police know the legal names of suspects (admitted at trial) but claimed not to know in warrant affidavit.

d. Ground four: 6th and 14th Amendment - Ineffective Assistance of Counsel at trial and on Appeal

Supporting FACTS (state briefly without citing cases or law) The gross ineffective representation and advocacy of petitioner's numerous attorney's amounted to no representation at all where his attorney's refused to present the above constitutional claims in state court, resulting in petitioner having to present said claims pro-se.

6. Direct Appeals

a. Did you file a direct appeal from your judgment of conviction or sentence?

Yes No

b. If you did file a direct appeal, for your initial appeal, answer the following:

i. The name and address of the court where you first appealed:

Pa. Superior Court - Pittsburgh (Western Dist.)

ii. The result of this appeal.

Affirmed Sentence

iii. The date of the decision. _____

iv. The citation and/or docket number of the decision (if known). 2195 WDA 2003

v. The grounds raised in your present habeas petition that were raised in this direct appeal.

Ground #1 - Confrontation Clause.

c. If you sought review of your appeal by a higher court, answer the following:

i. The name and address of the court where you next applied for review:

N/A

ii. The result of this appeal.

N/A

iii. The date of the decision. N/A

iv. The citation and/or docket number of the decision (if known).

N/A

v. The grounds raised in your present habeas petition that were raised in this earlier application for review:

N/A

d. If you filed a petition for certiorari in the U.S. Supreme Court, please answer the following with respect to each such petition:

i. The result. N/A

ii. The date of the result. N/A

iii. The citation and/or docket number (if known).

N/A

iv. The grounds raised in your present habeas petition that were raised in this earlier appeal..

N/A

7. Post-Conviction or other Collateral Review

a. Other than the direct appeals described above, have you previously filed any petitions, applications, or motions with respect to your judgment of conviction or sentence in the state court?

Yes ✓ No _____

b. If so, give the following information with regard to the first petition, application, or motion you filed:

i. The name and address of the court. Eric County Court of Common Pleas

ii. The nature of the proceeding. P.C.R.A.

iii. The date it was filed. August 29, 2005

iv. The grounds raised in your present habeas petition that were raised.

All claims have been exhausted fully by Pro-se Appeal Brief filed on December 18 2007 in # 1528-WDA-2007

v. Did you receive an evidentiary hearing? Yes No _____

vi. The result. Sentencing Claim granted sentence reduced * Court did not address Constitutional

vii. Did you appeal or file an application for review to higher state courts having jurisdiction? Yes No _____

viii. If not, briefly explain why you did not. N/A

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ix. If so, name the court(s) to which you applied, the date of the final result in each court, and the result in each court: Pa. Superior Court - Affirmed

See # 1528 WDA-2007 Comm v. Whaling

Pa Supreme Court # 279 WIAL 2009

c. If you filed a second petition, application, or motion, give the following information with regard to that filing:

i. The name and address of the court. N/A

ii. The nature of the proceeding. N/A

iii. The date it was filed. N/A

iv. The grounds raised in your present habeas petition that were raised.

N/A

N/A

v. Did you receive an evidentiary hearing? Yes _____ No X

vi. The result. N/A

vii. Did you appeal or file an application for review to higher state courts having jurisdiction? Yes _____ No _____

viii. If not, briefly explain why you did not. N/A

ix. If so, name the court(s) to which you applied, the date of the final result in each court, and the result in each court: N/A

8. Exhaustion of State Remedies

Generally, any ground that you seek to present here must have first been presented to the state courts. See 28 U.S.C. § 2244(b). Attach copies of previous petitions, applications, or motions filed with the state courts where you presented each of the grounds listed in Part 5. If any of the grounds listed in Part 5 above have not been previously presented to the highest state court that has the power to consider it, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Petitioner filed Pre-sc Appeal raising all claims in current Habeas, PCR and Appellate Counsel refused to present claims, Appellate court demanded for appointment of counsel who then refused to file claims

9. Prior Federal Habeas Petitions

a. Have you filed any other petition in any federal court where you sought to attack the same conviction(s) or sentence you are challenging here? Yes _____ No X

b. If so, give the following information:

i. The name and address of the court where it was filed. N/A

ii. The docket number. N/A

iii. The grounds raised. N/A

N/A

10. Other Pending Actions

- a. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment you are attempting to attack here? Yes No X
- b. If so, please give the following information:
 - i. The name and address of the court. N/A
 - ii. The docket number of the action. N/A
 - iii. The nature of the proceeding. N/A

11. Attorneys Representing Petitioner

Give the name and address of each attorney who represented you in the following stages of the judgment attacked herein:

- a. At the preliminary hearing. Gene Placido
- b. At the arraignment and plea. Same
- c. At trial. Same
- d. At sentencing. Same
- e. On appeal. Same
- f. In any post-conviction proceeding. William Hathaway, Jack Grayer, Bruce Sandmeyer, Allen J. Adams, Garrett Taylor (5) ATTORNEYS
- g. On appeal from any adverse ruling in a post-conviction proceeding. Garrett Taylor
2525 W 26th ST, ERIC, PA 16506

12. Other Sentences

- a. Where you sentenced for more than one offense in the same court and at the same time?
Yes ✓ No
- b. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes No ✓

i. If so, give the name and location of the court which imposed the sentence to be served in the future. NIA

ii. Give the date and length of the said sentence. NIA

iii. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes No X

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on X 4-5-10.
(date)

x Mark J. Whaling
Signature of Petitioner
PRO-SE

JUDICIAL NOTICE

Petitioner intends to file motion for leave to file an Amended Habcas Petition and Supporting Memorandum upon obtaining assistance of Paralegal who assisted in preparing petitioner's Pro-se State PCPA pleadings or other legal Counsel as petitioner has been approved for transfer "West" closer to home and closer to legal assistance. Petitioner is being held in AC status since early February awaiting approved transfer.

Mark J. Whaling
FW- 9846
1111 altamount Blvd.
Tractville Pa.
17931

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PER 28
DEPUTY CLERK

NO FEE
ENCLOSED
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MARY E. O'AN
CLERK OF COUR

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